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To: Kutches, Brandon (SHF)
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Xiphos (KSEE-fohss): a double-edged, one-handed sword used by ancient Greeks.

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February 2019

A butter knife, bathrobe, and bobbing in the bushes! This month's issue of *Xiphos* has abundant alliteration and of course convenient case commentary. We're also examining the importance of identifying excited delirium and the finite reach of free speech. Lastly, the recently decided *Timbs v. Indiana* revisits the Eighth Amendment Excessive Fines Clause in relation to the proportionality of proper punishment. (Here we go again...)

— *Ken*

No Felony for Juvenile Buttering Up (With a Dull Butter Knife) Her Sister

A juvenile, B.M., returned home to find the locks changed on the front door. When no one answered the door, she entered through a window. Angry at her older sister for ignoring her at the door, B.M. threw a phone at her and then went to the kitchen and grabbed a butter knife from the counter. The sister wrapped herself in a blanket and curled up on her bed.

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Women in a Bathrobe Didn't Have Authority to Consent to Search

Agents from the Drug Enforcement Administration executed an arrest warrant for Dimitris Terry due to his involvement with a conspiracy to possess and distribute heroin. Officers wanted to arrest him quietly and quickly, hoping to secure his cooperation in providing information about others involved in the drug distribution. When the officers saw Terry arrive home after taking his son to school, they arrested him when he got out of his car.

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Bush Bobbing Leads to Valid Investigative Detention

An officer leaving the courthouse with an early morning prisoner transport noticed Jeremiah Stevens hiding in bushes across the street, "bobbing up and down." The officer called for backup. Two officers arrived and approached Stevens, guns drawn and held at their sides, and ordered him to stand and turn around. The officers described Stevens as "very nervous" and immediately handcuffed him.

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Qualified Immunity for Officers Who Recognized Excited Delirium as a Medical Emergency

Andrew Layton was sleeping in the foyer of a grocery store. An officer sent to check on him tapped on Layton's shoulder to wake him. Layton responded suddenly and violently, making loud groaning and growling noises, so the officer tried to pin Layton to the ground on his stomach. The officer called for backup and bystanders helped the officer hold Layton down while Layton continued to yell incoherently, thrash his arms, kick his legs, and twist away.

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No Free Speech Right to Encourage Suicide

Michelle Carter and Conrad Roy maintained a long-distance relationship over the course of several years. They rarely had personal contact but frequently sent each other text messages and spoke on the phone. They often talked about Roy's fragile mental health and his many suicide attempts by various means. Initially, Carter encouraged Roy to seek help. Eventually, however, Carter transitioned to helping Roy plan his suicide.

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More Free Speech: Janet Jackson and Adam Levine Are Not Fungible—Nipple Nudity Neutrality Not Necessary

Officers were summoned to a lakefront beach park for complaints of a topless woman. When they arrived, they found shirtless, self-proclaimed “free the nipple” activist Ginger Pierro “performing yoga on the beach.” She reported several persons violently harassed her, but “out of everybody on the beach, there were only actually a handful that were upset.” The officers asked her to put on a shirt or bathing suit top, but she refused, and was arrested. A few days later, two other women, Kia Sinclair and Heidi Lilley, went topless to the same beach. When officers responded to complaints, the women expressed they were protesting Pierro’s arrest.

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Breach for Breach, Eye for Eye, Tooth for Tooth (Leviticus 24:20)

The notion “the punishment should fit the crime” dates back at least to the days of Moses the lawgiver. Cicero also taught the principle in ancient Rome. Dante’s notion of hell, expressed in the *Inferno*, was based on *contrapasso:* the equation of a punishment at the opposite end of spectrum of the crime. In modern constitutional law, the correlation of crime and punishment underlies the Eighth Amendment prohibition on excessive fines (as well as the ban on cruel and unusual punishments).

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Today's Tip featuring Gordon Graham

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